

Order

Michigan Supreme Court
Lansing, Michigan

Entered: January 31, 2003

2001-33

Amendments of Rules 2.401,
2.410, 2.506, and 7.213 of
the Michigan Court Rules

Maura D. Corrigan,
Chief Justice

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Clifford W. Taylor
Robert P. Young, Jr.
Stephen J. Markman,
Justices

On order of the Court, notice of the proposed changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, the following amendments of Rules 2.401, 2.410, 2.506, and 7.213 of the Michigan Court Rules are adopted, to be effective May 1, 2003.

[The present language of MCR 2.401 is amended as indicated below.]

Rule 2.401 Pretrial Procedures; Conferences; Scheduling Orders

(A)-(E) [Unchanged.]

(F) Presence of Parties at Conference. ~~In the case of a conference at which~~ If the court anticipates meaningful discussion of settlement is anticipated, the court may direct that ~~persons with authority to settle the case, including the parties to the action, agents of parties, representatives of lienholders, or representatives of insurance carriers, or other persons:~~

- (1) be present at the conference; or ~~(2)~~ be immediately available at the time of the conference; and
- (2) have information and authority adequate for responsible and effective participation in the conference for all purposes, including settlement.

The court's order may require the availability of a specified individual; provided, however, that the availability of a substitute who has the information and authority required by subrule (F)(2) shall constitute compliance with the order.

The court's order may specify whether the availability is to be in person or by telephone.

This subrule does not apply to an early scheduling conference held pursuant to subrule (B).

(G) Failure to Attend; ~~Default; Dismissal~~ or to Participate.

- (1) Failure of a party or the party's attorney or other representative to attend a scheduled conference or to have information and authority adequate for responsible and effective participation in the conference for all purposes, including settlement, as directed by the court, may constitute a default to which MCR 2.603 is applicable or a grounds for dismissal under MCR 2.504(B).

- (2) ~~The court shall excuse the a failure of a party or the party's attorney to attend a conference or to participate as directed by the court, and shall enter an just order other than one of default or dismissal, if the court finds that~~
- (a) entry of an order of default or dismissal would cause manifest injustice; or
 - (b) ~~the failure to attend~~ was not due to the culpable negligence of the party or the party's attorney.

The court may condition the order on the payment by the offending party or attorney of reasonable expenses as provided in MCR 2.313(B)(2).

(H)-(I) [Unchanged.]

[The present language of MCR 2.410 is amended as indicated below.]

Rule 2.410 Alternative Dispute Resolution

(A)-(C) [Unchanged.]

(D) Attendance at ADR Proceedings.

(1) [Unchanged.]

- (2) Presence of Parties. The court may direct that ~~persons with authority to settle a case, including~~ the parties to the action, agents of parties, representatives of lienholders, ~~or representatives of insurance carriers, or other persons:~~
- (a) be present at the ADR proceeding; ~~(b) or be immediately available at the time of the proceeding; and~~
 - (b) have information and authority adequate for responsible and effective participation in the conference for all purposes, including settlement.

The court's order may specify whether the availability is to be in person or by telephone.

(3) Failure to Attend; ~~Default; Dismissal.~~

- (a) Failure of a party or the party's attorney or other representative to attend a scheduled ADR proceeding, as directed by the court, may constitutes a default to which MCR 2.603 is applicable or a grounds for dismissal under MCR 2.504(B).
- (b) The court shall excuse ~~the a failure of a party or the party's attorney to attend an ADR proceeding, and shall enter an just order other than one of default or dismissal, if the court finds that~~
 - (i) entry of an order of default or dismissal would cause manifest injustice; or

- (ii) the failure to attend was not due to the culpable negligence of the party or the party's attorney.

The court may condition the order on the payment by the offending party or attorney of reasonable expenses as provided in MCR 2.313(B)(2).

(E)-(F) [Unchanged.]

[The present language of MCR 2.506 is amended as indicated below.]

Rule 2.506 Subpoena; Order to Attend

(A) Attendance of Party or Witness.

(1) [Unchanged.]

(2) The court may require a party and a representative of an insurance carrier for a party with information and authority to settle adequate for responsible and effective participation in settlement discussions to be present or immediately available at trial.

(3) [Unchanged.]

(B)-(I) [Unchanged.]

[The present language of MCR 7.213 is amended as indicated below.]

Rule 7.213 Calendar Cases

(A) Pre-Argument Conference in Calendar Cases.

(1) At any time before submission of a case, the Court of Appeals may direct the attorneys for the parties and client representatives with settlement information and authority adequate for responsible and effective participation in settlement discussions to appear in person or by telephone for a pre-argument conference. The conference will be conducted by the court, or by a judge, retired judge or attorney designated by the court, known as a mediator. The conference shall consider the possibility of settlement, the simplification of the issues, and any other matters which the mediator determines may aid in the handling of or the disposition of the appeal. The mediator shall make an order that recites the action taken at the conference and the agreements made by the parties as to any of the matters considered, and that limits the issues to those not disposed of by the admissions or agreements of counsel. Such order, when entered, controls the subsequent proceedings, unless modified to prevent manifest injustice.

(2)-(6) [Unchanged.]

(B)-(E) [Unchanged.]

Kelly, J. (dissenting) states as follows: I do not support the amendments, as I believe that they are unnecessary.

Staff Comment: MCR 2.401(F) and (G), MCR 2.410(D)(2) and (3), MCR 2.506(A), and MCR 7.213(A) were amended January 31, 2003, effective May 1, 2003. Before the amendments, each of these subrules included a requirement that someone with “authority to settle” (or similar language) attend the type of proceeding described in each subrule. The amendments substituted the more flexible requirement that the person attending the proceeding have “information and authority adequate for responsible and effective participation” in settlement discussions.

The 2003 amendments of MCR 2.401(G) and MCR 2.410(D)(3) de-emphasized the use of defaults as sanctions for a party’s failure to comply fully with an order. The amended rules allow entry of a default, but tilt in favor of less drastic sanctions.

The staff comment is published only for the benefit of the bench and bar and is not an authoritative construction by the Court.



I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

January 31, 2003

Corbin R. Davis
Deputy Clerk